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[2000] C.R.D.D. No. 227
Nos. T99-09484, TA0-04480

**Immigration and Refugee Board of Canada
Convention Refugee Determination Division
Toronto, Ontario
Panel: Bonnie E. Milliner and Puttaveeraiah Prabhakara
In camera**

Heard: July 10, 2000.
Decision: October 31, 2000.

Myanmar — Positive — Negative — Political opinion — Particular social group — Family — Male — Female.

Appearances:

Mark Fromkin, for the claimant(s).

Selwyn Pieters, Refugee Claim Officer.

REASONS FOR DECISION

¶ 1 On July 10, 2000, at Toronto, Ontario, the Convention Refugee Determination Division (CRDD) of the Immigration and Refugee Board (IRB) heard the claims of xxx xxxx (a.k.a. xxxxxxxxx), age 30, and his wife, xxxxxxxxxx (a.k.a. xxxxx xxx), age 25, to be Convention refugees pursuant to section 69.1 of the Immigration Act. The claimants are citizens of Myanmar. They base their claim to a well-founded fear of persecution on the grounds of, in the case of the male claimant, political opinion as a Burmese student activist, and the female claimant, on membership in a particular social group, namely, family of political activists.

¶ 2 The panel noted that at least the male claimant, according to his own assertion, is fluent in the English language, but stated a preference not to use English in a formal setting like this hearing.

¶ 3 The written submissions of Counsel and the written observations of the Refugee Claim Officer (RCO) were considered in the making of this decision. The names of Myanmar and Burma are used throughout interchangeably.

Summary of the Male Claimant's Allegations

¶ 4 In 1987, the Burmese military government declared the country's currency invalid, making many people very miserable which incurred the claimant's hatred of the military government.

¶ 5 The following year, a large number of students and workers went on strike in an attempt to overthrow the repressive government and gain democratic elections. Many people died. The claimant was arrested and served one year in jail for political reasons. On release, the claimant continued his democratic ideals.

¶ 6 In 1990, an election was held and was won by Aung San Suu Kyi, daughter of the father of Burmese independence, Aung San, but the military refused to hand over power. She was refused permission to accept the Nobel Peace prize the following year, and she was left under house arrest.

¶ 7 The activist group to which the claimant belonged engaged in another strike on July 7, 1995 aimed at releasing political prisoners from jail and releasing Aung San Suu Kyi from house arrest. Some people were arrested, but the claimant was able to escape to Thailand where he stayed until he came to Canada. He cannot return to Myanmar because the police are still looking for him. He fears that if he is returned to Myanmar, as he arrives at the border, he will be arrested because of his dissident activities.

Summary of the Female Claimant's Allegations

¶ 8 The female claimant is basing her claim on her husband's story. She left Myanmar to join him in Thailand in January 1999, as an illegal resident. In a last minute addendum to her Personal Information Form (PIF), [See Note 1 below] she claimed that she felt unsafe while alone in Bangkok after her husband left because Thailand was planning to deport illegal Burmese immigrants. She was also concerned about her husband's well-being since, according to Burmese tradition, it is the wife's responsibility to care for her husband and to follow where he goes. She purchased a passport through a friend in Bangkok and came to Canada by herself some seven months after her husband.

Note 1: Exhibit C2, (b).

Determination

¶ 9 In order for the panel to find the claimants to be Convention refugees, the evidence must establish that they have good grounds to fear persecution for at least one of the reasons set out in the Convention refugee definition. The standard of proof to be applied in assessing whether good grounds exist is set out in Adjei. [See Note 2 below] The panel was satisfied that there is a "serious possibility" that the male claimant, should he return to Myanmar, would be persecuted, based on his political opinion. On the other hand, the panel was not satisfied that the female

claimant would be persecuted based on her membership in a particular social group, namely, family of political activists.

Note 2: *Adjei v. Canada (Minister of Employment and Immigration)*, [1989] 2 F.C. 680.

Issues

¶ 10 Based on personal documents presented, [See Note 3 below] and considering that the claimants spoke the Burmese language, the panel accepted the personal and national identity of both claimants. Issues remaining to be canvassed were third country status (Thailand), credibility, delay in leaving Thailand, failure of the male claimant to claim in either Cyprus or Israel where he stayed for some days on his way to Canada, failure of the female to claim in England, and objective basis. Counsel protested the inclusion of delay in leaving Thailand as an issue because he felt that delay only applied when the claimants came to Canada. The panel ruled that delay in leaving was properly before us as an issue. The Court has noted that delay in making a claim is relevant from the date as of which a claimant begins to fear persecution. [See Note 4 below] Delay can point to a lack of subjective fear of persecution. Since both claimants were allegedly illegally in Thailand, yet both incurred sufficient significant delays in leaving Thailand, the question of delay in leaving Thailand was an issue to be canvassed.

Note 3: Exhibit C4.

Note 4: *Gabeyehu, Bruck v. Canada (Minister of Citizenship and Immigration)*, (F.C.T.D., no. IMM-863-95), Reed, November 8, 1995.

Analysis

Credibility

¶ 11 The panel considered, in its entirety, the evidence of both claimants, taking into consideration their age, level of education, sophistication and cultural differences that might impact on their testimony. There were portions of the claimants' testimony that gave rise to serious credibility concerns.

Marriage Certificate

¶ 12 The panel did not believe that the claimants were married when they alleged to be married. The marriage certificate [See Note 5 below] provided by the couple as corroboration of their marriage, and their testimony, gave rise to some contradictions and inconsistencies that were not satisfactorily explained. The certificate on which is written a date of issue of xxxxx,

1994 lists the age of the bridegroom as being twenty-nine years which means he would have to have been born in 1964 or 1965. However, in his PIF and to Citizenship and Immigration Canada (CIC), he lists his date of birth as xxxxx, 1970. The marriage document lists the female claimant as being twenty-six years which means that she would have to have been born in 1967 or 1968. However, in her PIF and to CIC, she lists her date of birth as xxxxx, 1974. Also, the male claimant listed his wife's date of birth as 1969 on his PIF, [See Note 6 below] amending it to 1974 at the outset of the hearing. Furthermore, he also gave the year 1969 to CIC on the Information on Admissibility form. [See Note 7 below] In addition, the female claimant indicated to the Immigration Officer that she had been "married for years" but could not provide an exact date. [See Note 8 below] When asked about the inconsistency in his wife's date of birth, the male claimant explained that when he filled out the form, he made an error and he forgot. When asked how he could make an error of five years, he stated that he remembered her date of birth was 1974 but wrote 1969 when he filled in the form. When asked about the confusion in the marriage dates, he stated, using the plural, that when they arrived at the Port of Entry (POE), they were pretty nervous and just could not remember the exact dates. The claimant was not asked what he meant by the use of the plural, considering that they arrived in Canada seven months apart. This is a young couple. There is no evidence before the panel that either is cognitively impaired. Given the depth of devotion and responsibility that the female claimant professed toward her husband, the panel finds it implausible that she would not remember her wedding date. The panel finds it similarly implausible that the male claimant could remember his wife's date of birth was 1974 but still write it five years differently (i.e. 1969). "I forgot", is not a satisfactory explanation, and neither does being nervous preclude telling the truth. Even allowing for nervousness at the POE, a reasonable person would expect that an individual would remember important milestones like the dates of birth and the date of marriage, particularly when the alleged marriage only took place six years ago. Taking all of the above into consideration, and the lack of satisfactory explanation for the date inconsistencies, the panel gives no weight to the certificate of marriage, and finds that while they may have subsequently married, on a balance of probabilities, the couple were not married at the material time, i.e. in Burma before the male claimant left. We find their credibility to be undermined.

Note 5: Exhibit C4, no 6.

Note 6: Exhibit C 1, PIF, q. 15 (1).

Note 7: Exhibit M1, Information on Admissibility, p. 1, q. 15 (a).

Note 8: Exhibit M 1, Immigration Officer's Handwritten Notes, March 17, 2000, p. 6.

Female Claimant in Thailand

¶ 13 The female claimant gave several different answers with respect to when she actually was in Thailand. In her PIF, she wrote that she was in Thailand from January 1, 2000 to January 17, 2000. [See Note 9 below] In another area of her PIF, she wrote that she was in Thailand January 1999 to December 1999, but deleted it at the outset of the hearing even though her

alleged time in Thailand was within the last five years as the question instructs. [See Note 10 below] In yet another spot, she wrote that she was in Thailand from January 1999 to January 2000. [See Note 11 below] Her passport indicates that she was only in Thailand between December 20, 1999 and January 17, 2000, [See Note 12 below] but the document is known to be fraudulent and is not a reliable source of dates. The male claimant's narrative mentions nothing about the female claimant coming to Thailand, and, in another part of his PIF, [See Note 13 below] he writes her whereabouts as Yangon, Burma, at a time when she was allegedly in Thailand.

Note 9: Exhibit C2 (a), PIF, q. 31 (2).

Note 10: Ibid, q. 23 (1).

Note 11: Ibid, q. 22 (2).

Note 12: Exhibit M2, Passport, p. 9, Thailand Immigration Stamp.

Note 13: Exhibit C1, PIF, q. 15 (1).

¶ 14 In addition, she stated that she spent a year in Thailand, but later stated that her journey to Canada was one continuous journey, that all the countries she passed through were one continuous journey from Burma. If she were to have stayed a year in Thailand, then, in the opinion of the panel, it was not a continuous journey. A time period as long as a year could not, in the mind of a reasonable person, imply just passing through on one continuous journey. When asked about the confused dates for when she was allegedly in Thailand, Counsel answered for her, saying it referred to the last five years. When the question was put again to the female claimant to answer, she responded that she arrived in Thailand on June 3, 1999, yet a different date again. When asked why the one set of dates had been deleted, she answered non-responsively, saying that she had never been there before, and then claimed not to understand the question.

¶ 15 When, near the end of the hearing she was asked again about the different times given for her alleged stay in Thailand, she had no answer at all. The panel does not find her explanations with regard to the discrepancies in the dates when she was supposed to be in Thailand satisfactory. This claimant is a university graduate [See Note 14 below] and has been represented by counsel in Canada for the purpose of her refugee claim. The panel does not find credible her account of a stay in Thailand. We do not find that she was in Thailand for as long as she said she was, nor do we find that, on a balance of probabilities, she would be perceived by Thailand as an illegal immigrant.

Note 14: Exhibit C 4, no 3, Bachelor of Arts, University of Yangon, March 1994.

Female claimant: PIF Addition

¶ 16 The female claimant signed her PIF on April 24, 2000, and where one would expect to see a narrative, she referred to her husband's PIF, [See Note 15 below] the narrative of which does not mention her at all. However, at the outset of the hearing and the introduction, she suddenly provided an addition to her story. [See Note 16 below] (Her husband had earlier translated her PIF to her from English to Burmese but found it difficult. Therefore, the PIF was retranslated to the female claimant by the hearing room interpreter). When asked why she did not put her story with her PIF when she signed it in April 2000, her response was that she only wanted to be with her husband. Again, given that she was represented by counsel, the panel finds the explanation unsatisfactory. Counsel proposed that it was the statement of a loving wife and that it repeated what was in the narrative. The panel cannot agree since there was nothing in her narrative and no mention of her in the narrative of her husband.

Note 15: Exhibit C 2 (a), p. 8, q. 37.

Note 16: Exhibit C 2 (b), Handwritten Narrative.

¶ 17 While the role of a traditional Burmese wife, as outlined in her story, may be to care for her husband's well-being, that, in itself, is insufficient to establish a claim for refugee status. We were not persuaded that the female claimant was in Thailand for any appreciable length of time. She claimed in her newly-submitted story that she feared staying alone in Thailand because Thailand was deporting illegal immigrants and Burmese dissidents. We have already determined that, on a balance of probabilities, she would not be perceived as an illegal immigrant in Thailand. Even if she were perceived as such and were deported back to Burma, the panel also does not find that she has a well-founded fear of persecution in Burma. We do not find that she could be perceived as a dissident in either Thailand or Burma, either on her own or as the wife of a known dissident. We say that for the following reasons. We found the male claimant, for the most part, to be a credible and trustworthy witness, with the already noted exception of his testimony regarding his marriage. When asked why his wife did not leave Myanmar with him or shortly thereafter, he testified that he was not sure where he would settle. He added that the female claimant was questioned by the authorities a few times, but because she was low key and had not participated in anything, she was safe at home (in Myanmar) (emphasis added). The panel finds the male claimant's statement to be a clear indication that the Burmese authorities are not interested in the female claimant, either with or without a connection to the male claimant. Being questioned a few times by the authorities does not signify persecution.

¶ 18 When the female claimant was asked why she waited four years to join the male claimant in Thailand, she stated that it was because she was not sure how long he could stay and that her brother was sick. The panel determines that her ability to stay safely in Myanmar and the fact that the male claimant felt she was safe in Myanmar indicates that there is less than a mere possibility that she would face persecution for her connection with the male claimant. While her wish to follow the male claimant for the sake of their relationship may be understandable, it is insufficient to establish a claim to refugee status. Neither is mere

membership in the Burma Canadian Association of Ontario (BCAO) sufficient to establish a claim to refugee status. [See Note 17 below]

Note 17: Exhibit C4, no 2, BCAO Letter, June 26, 2000.

Political Activity of the Male Claimant

¶ 19 The male claimant outlined his concerns with the military government of Myanmar, citing his grandfather's losses, and his own difficulties, beginning in 1988. While what occurred in 1988 is old news, the claimant was clearly affected by his experiences in prison. When he became again involved in a protest incident in 1995 which was in support of Aung San Suu Kyi, whose name is synonymous with pro-democracy in Burma, he had to flee Burma to avoid arrest.

¶ 20 In addition, while he was not a high profile leader by any means, he was heavily involved in a student organization, known as an organizer who went about getting people to participate in protest demonstrations. He believes that because of his organizing activities, especially in 1995, and because of his open criticism of the present Burmese government, he would be known by the authorities, specifically the military intelligence who keep an eye on Burmese dissidents in Thailand.

¶ 21 In addition, he has carried on with his Burmese political affiliations in Canada, belonging to the Burmese students democratic movement. Because he believes in non-violent political activity, he participated in the September 9, 1999 hunger strike in Toronto to commemorate 1988/1989 events in Burma, and to bring awareness to the international community. [See Note 18 below]

Note 18: Ibid, no 7, Photographs of Male Claimant at a Pro-Democratic Demonstration in Toronto.

Objective Basis

¶ 22 To determine the situation in Myanmar for someone who is seen as an activist or dissident, the panel turned to the documentary evidence which is consistent with the male claimant's account of events.

¶ 23 In 1988, serious pro-democracy demonstrations were led by Nobel Laureate Aung San Suu Kyi and her National League for Democracy (NLD). These demonstrations ended with a violently repressive government crackdown a few months later. [See Note 19 below] Thousands of students fled to Thailand, and many students and pro-democracy military leaders were arrested. [See Note 20 below] Currently, detention of political opponents continues. Lengthy sentences have been meted out to students who have been challenging the government through

demonstrations. [See Note 21 below] Political activists have been known to "disappear." [See Note 22 below] The government closely monitors the activities of those known to be politically active. [See Note 23 below] Students and other political dissidents in general face only temporary difficulties on return to Burma. They can, however, expect to be subjected to arbitrary treatment, and can expect to spend weeks to months in detention in a military intelligence facility immediately on return, undergoing extensive questioning about past activities as well as the activities of others with whom they have associated while abroad. Of particular note is the expectation that authorities will take severe action against returnees if they engage in activities considered undesirable by the authorities. [See Note 24 below] Taking all of the above into consideration, the panel determines that the male claimant could face a serious possibility of persecution, were he to be returned to Burma.

Note 19: Exhibit R 1, RCO Basic Disclosure, Section 3, Burma - United States Department of State, Profile of Asylum Claims and Country Conditions, Section II, A.

Note 20: Ibid, Section III, D, (2).

Note 21: Exhibit C3, no 1, World Report 1999, Human Rights Watch: Burma, p. 1.

Note 22: Exhibit R 2, United States Department of State, 1999 Country Reports on Human Rights Practices, p. 4.

Note 23: Ibid, Section 1 f, p. 6.

Note 24: Exhibit R1, Section 3, Burma - United States Department of State, Profile of Asylum Claims and Country Conditions, Section III, D 4.

Delay in Thailand

¶ 24 The male claimant spent four years in Thailand, living and working there illegally before he finally decided to come to Canada. Such a lengthy period of time could perhaps lead to a conclusion of lack of subjective fear. He testified that he did not claim as a refugee in Thailand because the Thais prefer to accept the Burmese from the border area rather than those from the cities. In addition, for some time, the male claimant was able to work and function "without a hassle" in Bangkok; therefore, he did not think of applying as a refugee. He said that he declined to go to the border area because he might have to be involved in fighting activity and he is against violence. He added that he was fortunate to have a job as an illegal immigrant in Thailand, and his intent was to stay there and still participate in demonstrations to improve his country. However, he stated, the Thai government in 1998 began to crack down on illegal immigrants and dissidents from Burma. He added that the Burmese military government had spies in Thailand and they were becoming more active in Thailand, trying to find activists. He stated that his name was among those collected. Reports would be made to the Thai authorities so that they would deport the illegal residents back to Burma where they would face torture and

imprisonment. The male claimant professed that if the Thai police caught him in Bangkok, he would be deported back to Burma.

¶ 25 The crackdown by Thai authorities took place in the summer of 1998, but the male claimant did not leave until nearly a year later. His explanation was that he was trying to raise the money. The panel finds the explanation plausible. If he was working illegally in Thailand and dodging the Thai authorities to avoid deportation, it could not have been easy to raise the funds for a trip to Canada. While delay in leaving can be relevant and can indicate a lack of subjective fear, in this case before us, given the circumstances peculiar to this claimant, the panel is not prepared to hold it against him.

¶ 26 The documentary evidence on Thailand, for the most part, consistent with the male claimant's account, indicates that, while the Thai government does allow illegal Burmese to obtain some work, particularly manual labour, they reserve the right to formally deport the workers, and, in fact, actually did so in 1999.

¶ 27 Thailand has followed a policy of providing first asylum to new arrivals, but conditioned entry on "flight from fighting" rather than the broad grounds of persecution on United Nations Convention grounds. While there were no reports that the Thai authorities forcibly repatriated asylum seekers to Burma, they have been taking steps to speed up the resettlement of Burmese students who were involved in dissident activity. [See Note 25 below] In any case, the matter is moot - the male claimant has no legal right to return to Thailand.

Note 25: Exhibit R2, United States Department of State, 1999 Country Reports on Human Rights Practices, p. 3.

Conclusion

¶ 28 For all of the reasons stated above, and after careful consideration of all the evidence, the panel concludes that the male claimant has good grounds for fearing persecution in Myanmar by reason of his political opinion, as a Burmese activist. However, the panel concludes that the female claimant does not have good grounds for fearing persecution in Myanmar based on her membership in a particular social group, namely, family of political activists, or on any of the other enumerated grounds of the Convention refugee definition.

¶ 29 Therefore, the Refugee Division determines the claimant, xxxxxxxxxx (a.k.a. xxxxxxxxx), is a Convention refugee. The Refugee Division determines that xxx xxxxx(a.k.a. xxxxx) is not a Convention refugee.

"Bonnie E. Milliner"

Concurred in by: "Puttaveeraiah Prabhakara"

Dated at Toronto this 31st day of October, 2000.

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